



# California Regional Water Quality Control Board San Diego Region



Linda S. Adams  
Secretary for  
Environmental  
Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties  
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Arnold  
Schwarzenegger  
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4340  
(858) 467-2952 • Fax (858) 571-6972  
[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

March 16, 2009

In reply refer to: WPS:09C-001:JEbsen

Certified Mail Number:  
7008 1140 0002 4285 3575

Allison Gutierrez  
San Diego Unified Port District  
P.O. Box 120488  
San Diego, CA 92112-0488

File No.	09C-001
WDID:	9 000001877
CIWQS	
Reg. Measure ID:	359417
Place ID:	646923
Party ID:	39631
Person ID:	90692

Dear Ms. Gutierrez:

**SUBJECT: Action on Request for Clean Water Act Section 401 Water Quality Certification for the Structural Upgrades to Broadway Pier Water Quality Certification No. 09C-001**

Enclosed find Clean Water Act Section 401 Water Quality Certification (Certification) with acknowledgment of enrollment under State Water Resources Control Board Order No. 2003-017 DWQ for Statewide General Waste Discharge Requirements for Dredged or Fill Discharges that have received State Water Quality Certification for the Structural Upgrades to Broadway Pier project. A description of the project and location can be found in the project information sheet and on location and site maps compiled by the California Regional Water Quality Control Board, San Diego Region (Regional Board), which are included as Attachments 1 through 3.

Any petition for reconsideration of this Certification must be filed with the State Water Resources Control Board within 30 days of certification action (23 CCR § 3867). If no petition is received, it will be assumed that you have accepted and will comply with all the conditions of this Certification.

Failure to comply with all conditions of this Certification may subject you to enforcement actions by the Regional Board including administrative enforcement orders requiring you to cease and desist from violations, or to clean up waste and abate existing or threatened conditions of pollution or nuisance; administrative civil liability in amounts of up to \$10,000 per day per violation; referral to the State Attorney General for injunctive relief; and, referral to the District Attorney for criminal prosecution.

***California Environmental Protection Agency***

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at <http://www.swrcb.ca.gov>.*

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6002 / 21 / 5

A. Gutierrez  
San Diego Unified Port District  
401 Certification 09C-001

- 2 -

March 16, 2009

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

If you have any questions regarding this notification, please contact Ms. Jody Ebsen directly at 858-636-3146 or by email via [jebsen@waterboards.ca.gov](mailto:jebsen@waterboards.ca.gov).

Respectfully,



JOHN H. ROBERTUS  
Executive Officer

Enclosure:

Clean Water Act Section 401 Water Quality Certification No. 09C-001 for the Structural Upgrades to Broadway Pier project, with 3 attachments

cc: Refer to Attachment 2 of Certification 2 for Distribution List.

*California Environmental Protection Agency*



Linda S. Adams  
Acting Secretary for  
Environmental  
Protection

# California Regional Water Quality Control Board San Diego Region

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Action on Request for  
Clean Water Act Section 401 Water Quality Certification  
and Waste Discharge Requirements  
for Discharge of Dredged and/or Fill Materials

**PROJECT:** Structural Upgrades to Broadway Pier  
Certification No. 09C-001 WDID No. 900001857

**APPLICANT:** Allison Gutierrez  
San Diego Unified Port District  
P.O. Box 120488  
San Diego, CA 92112-0488

File No.	09C-001
WDID:	9 000001877
<i>C/WQS</i>	
Reg. Measure ID:	359417
Place ID:	646923
Party ID:	39631
Person ID:	90692

**ACTION:**

<input checked="" type="checkbox"/> Order for Low Impact Certification	<input type="checkbox"/> Order for Denial of Certification
<input type="checkbox"/> Order for Technically-conditioned Certification	<input type="checkbox"/> Waiver of Waste Discharge Requirements
<input checked="" type="checkbox"/> Enrollment in SWRCB GWDR Order No. 2003-017 DWQ	<input type="checkbox"/> Enrollment in Isolated Waters Order No. 2004-004 DWQ

**PROJECT DESCRIPTION:**

The project is to provide structural upgrades to the Broadway Pier in San Diego. It involves the installation and repair of various utility lines under and penetrating through the pier dock; the installation of an escalator pit; the encasement of concrete beams below the deck and pit; concrete encasement under the deck; and the installation of seismic joints and 24 concrete pile caps.

**STANDARD CONDITIONS:**

The following three standard conditions apply to all Certification actions, except as noted under Condition 3 for denials (Action 3).

1. This Certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the California Water Code and section 3867 of Title 23 of the California Code of Regulations (23 CCR).

*California Environmental Protection Agency*

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at <http://www.swrcb.ca.gov>.*

Recycled Paper



2. This Certification action is not intended and must not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent Certification application was filed pursuant to 23 CCR subsection 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. The validity of any non-denial Certification action (Actions 1 and 2) must be conditioned upon total payment of the full fee required under 23 CCR section 3833, unless otherwise stated in writing by the certifying agency.

**ADDITIONAL CONDITIONS:**

In addition to the three standard conditions, the San Diego Unified Port District must satisfy the following:

**A. GENERAL CONDITIONS:**

1. The San Diego Unified Port District must, at all times, fully comply with the engineering plans, specifications and technical reports submitted to the California Regional Water Quality Control Board, San Diego Region (Regional Board), to support this 401 Water Quality Certification (Certification) and all subsequent submittals required as part of this Certification and as described in Attachment 1. The conditions within this Certification must supersede conflicting provisions within such plans submitted prior to the Certification action. Any modifications thereto, would require notification to the Regional Board and reevaluation for individual Waste Discharge Requirements and/or Certification amendment.
2. During construction, the San Diego Unified Port District must maintain a copy of this Certification at the project site so as to be available at all times to site personnel and agencies.
3. San Diego Unified Port District must permit the Regional Board or its authorized representative at all times, upon presentation of credentials:
  - a. Entry onto project premises, including all areas on which wetland fill or wetland mitigation is located or in which records are kept.
  - b. Access to copy any records required to be kept under the terms and conditions of this Certification.
  - c. Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this Certification.
  - d. Sampling of any discharge or surface water covered by this Order.

4. The San Diego Unified Port District must notify the Regional Board within 24 hours of any unauthorized discharge, including hazardous or toxic materials, to waters of the U.S. and/or State; measures that were implemented to stop and contain the discharge; measures implemented to clean-up the discharge; the volume and type of materials discharged and recovered; and additional best management practice (BMPs) or other measures that will be implemented to prevent future discharges.
5. The San Diego Unified Port District must, at all times, maintain appropriate types and sufficient quantities of materials onsite to contain any spill or inadvertent release of materials that may cause a condition of pollution or nuisance if the materials reach waters of the U.S. and/or State.
6. This Certification is not transferable to any person except after notice to the Executive Officer of the Regional Board. San Diego Unified Port District must notify the Regional Board of any change in ownership of the project area. Notification must include, but not be limited to, a statement that the property owner has provided the purchaser with a copy of the Section 401 Water Quality Certification and that the purchaser understands the permit requirements and must implement them; the seller and purchaser must sign and date the notification. The notification for transfer of mitigation responsibility shall include a signed statement from the new party demonstrating acceptance and understanding of the responsibility to meet the mitigation conditions and applicable requirements of the Certification. Notification must be provided within **10 days** of the sale of the property.
7. In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation must be subject to any remedies, penalties, process or sanctions as provided for under State law. For purposes of section 401(d) of the Clean Water Act, the applicability of any State law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Certification.
8. In response to a suspected violation of any condition of this Certification, the Regional Board may require the holder of any permit or license subject to this Certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Board deems appropriate, provided that the burden, including costs, of the reports must bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
9. In response to any violation of the conditions of this Certification, the Regional Board may add to or modify the conditions of this Certification as appropriate to ensure compliance.

**B. PROJECT CONDITIONS:**

1. Prior to the start of the project, and annually thereafter, the San Diego Unified Port District must educate all personnel on the requirements in this Certification, pollution prevention measures, spill response, and BMP implementation and maintenance.
2. San Diego Unified Port District must comply with the requirements of State Water Resources Control Board Water Quality Order No. 2003-0017-DWQ, Statewide General Waste Discharge Requirements for discharges of dredged or fill material that have received State Water Quality Certification. These General Waste Discharge Requirement are accessible at:  
[http://www.waterboards.ca.gov/cwa401/docs/generalorders/go\\_wdr401regulated\\_projects.pdf](http://www.waterboards.ca.gov/cwa401/docs/generalorders/go_wdr401regulated_projects.pdf).
3. All debris generated from this project shall be prevented from entering San Diego Bay. Any debris discharged into the Bay shall be collected and removed from the bay and disposed of properly.
4. Substances hazardous to aquatic life including, but not limited to, petroleum products, raw cement/concrete, asphalt, and coating materials, must be prevented from contaminating the soil and/or entering waters of the United States and/or State. BMPs must be implemented to prevent such discharges during each project activity involving hazardous materials.

**C. REPORTING:**

1. All information requested in this Certification is pursuant to California Water Code (CWC) section 13267. Civil liability may be administratively imposed by the Regional Board for failure to furnish requested information pursuant to CWC section 13268.
2. All applications, reports, or information submitted to the Regional Board must be signed and certified as follows:

*"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."*

3. San Diego Unified Port District must submit reports required under this Certification, or other information required by the Regional Board, to:

Executive Officer  
California Regional Water Quality Control Board  
San Diego Region  
Attn: 401 Certification; Project No. 09C-001  
9174 Sky Park Court, Suite 100  
San Diego, California 92123

**PUBLIC NOTIFICATION OF PROJECT APPLICATION:**

On January 12, 2009, receipt of the project application was posted on the Regional Board web site to serve as appropriate notification to the public.

**REGIONAL WATER QUALITY CONTROL BOARD CONTACT PERSON:**

Jody Ebsen  
California Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123  
(858) 6363146  
jebesen@waterboards.ca.gov

**WATER QUALITY CERTIFICATION:**

I hereby certify that the proposed discharge from the Structural Upgrades to Broadway Pier (Project No. 09C-001 ) will comply with the applicable provisions of sections 301 ("Effluent Limitations"), 302 ("Water Quality Related Effluent Limitations"), 303 ("Water Quality Standards and Implementation Plans"), 306 ("National Standards of Performance"), and 307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act. This discharge is also regulated under State Water Board Order No. 2003-0017-DWQ, "Statewide General Waste Discharge Requirements for Dredged or Fill Discharges that have Received State Water Quality Certification (General WDRs)," which requires compliance with all conditions of this Water Quality Certification. Please note that enrollment under Order No. 2003-017 DWQ is conditional and, should new information come to our attention that indicates a water quality problem, the Regional Board may issue waste discharge requirements at that time.

Except insofar as may be modified by any preceding conditions, all Certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the applicants' project

description and/or on the attached Project Information Sheet, and (b) on compliance with all applicable requirements of the Regional Board's Water Quality Control Plan (Basin Plan).

  
\_\_\_\_\_  
JOHN H. ROBERTUS  
Executive Officer  
Regional Water Quality Control Board

3/16/2009  
Date

- Attachments:
1. Project Information
  2. Distribution List
  3. Location Map

**ATTACHMENT 1  
PROJECT INFORMATION**

Applicant: ✓ San Diego Unified Port District  
 Attention: Allison Gutierrez  
 P.O. Box 120488  
 San Diego, CA 92112-0488  
 Telephone: 619-686-6254  
 Facsimile: 619-6866467  
 Email: agutierr@portofsandiego.org

Project Name: ✓ Structural Upgrades to Broadway Pier

Project Location: ✓ Broadway Pier at the terminus of Broadway in San Diego

Type of Project: ✓ Upgrades to existing pier.

Need for Project: Provide adequate ship berthing and passenger loading amenities, and to meet current homeland security, environmental and seismic requirements.

Project Description: It involves the installation and repair of various utility lines under and penetrating through the pier dock; the installation of an escalator pit; the encasement of concrete beams below the deck and pit; concrete encasement under the deck; and the installation of seismic joints and 24 concrete pile caps.

Federal Agency/Permit: U.S. Army Corps of Engineers, Letter of Permission , Kari Coler

Other Required Regulatory Approvals: Port of San Diego, Coastal Development Permit, John Helmer

California Environmental Quality Act (CEQA) Compliance: ✓ California Environmental Quality Act (CEQA) Determination Addendum to the 2001 Master Environmental Impact Report (Master EIR) for the North Embarcadero Alliance Visionary Plan, April 23, 2007, San Diego Unified Port District.

Receiving Water: ✓ San Diego Bay

Affected Waters of the United States/State: Ocean

Dredge Volume: N/A

Compensatory Mitigation: ✓ Upgrades are to the exiting pier and the upper portions of existing piles. No significant impacts to water are anticipated therefore no mitigation is required.

Public Notice:            ✓On January 12, 2009, receipt of the project application was posted on the Regional Board web site to serve as appropriate notification to the public.

Fees:                        ✓Total Due: \$640.00  
                                 Total Paid: \$640.00 (check No. 121871)

CIWQS:                     Regulatory Measure ID: 359417  
                                 Place ID: 646923  
                                 Party ID: 39631

**ATTACHMENT 2  
DISTRIBUTION LIST**

Ms. Kari Coler  
U.S. Army Corps of Engineers, Regulatory Branch  
San Diego Field Office  
6010 Hidden Valley Rd, Ste 105  
Carlsbad, California 92011

Via email:

State Water Resources Control Board, Division of Water Quality  
401 Water Quality Certification and Wetlands Unit  
[Stateboard401@waterboards.ca.gov](mailto:Stateboard401@waterboards.ca.gov)

U.S. Environmental Protection Agency, Region 9  
Wetlands Regulatory Office  
[R9-WTR8-Mailbox@epa.gov](mailto:R9-WTR8-Mailbox@epa.gov)

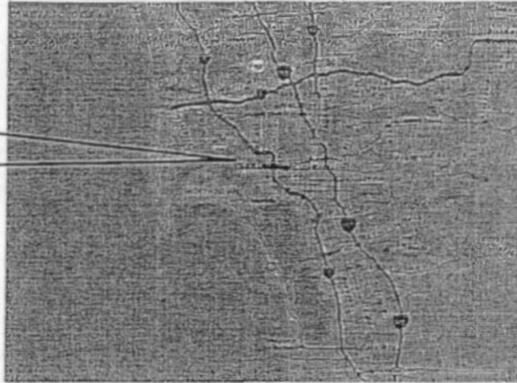
Ms. Sally Brown  
U.S. Department of the Interior  
Fish and Wildlife Service  
[Sally\\_Brown@fws.gov](mailto:Sally_Brown@fws.gov)

RECEIVED

ATTACHMENT 3

FEB 9 2007

REGULATORY BRANCH  
SAN DIEGO OFFICE

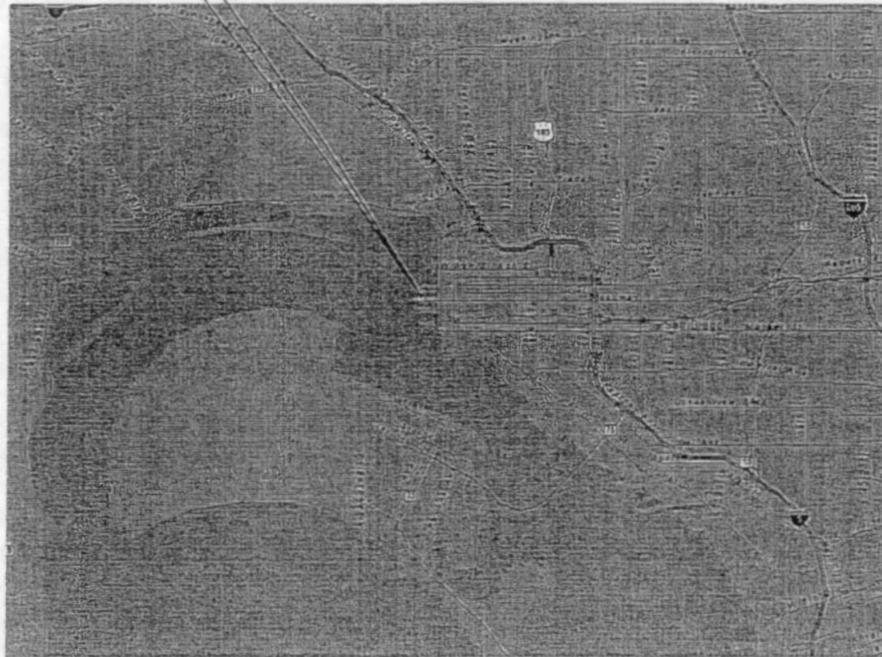


BROADWAY PIER

BROADWAY PIER

VICINITY MAP

NO SCALE



LOCATION MAP

NO SCALE



NORTH

PURPOSE: BROADWAY PIER  
CRUISE SHIP TERMINAL  
STRUCTURAL DECK  
UPGRADE

DATUM: M.L.L.W.  
ADJACENT PROPERTY OWNERS:  
UNIFIED PORT OF SAN DIEGO

UNIFIED PORT OF SAN DIEGO  
3165 PACIFIC HIGHWAY  
SAN DIEGO, CA 92101

ASST. DIRECTOR OF ENGINEERING:

-----  
DRAWN BY: DW CHECKED BY: MNM

IN: SAN DIEGO BAY  
AT: SAN DIEGO  
COUNTY OF: SAN DIEGO STATE: CA  
APPLICATION BY:  
UNIFIED PORT OF SAN DIEGO

SHEET 1 OF 15 DATE: 12/26/06  
DWG NO: REV: -

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7008 1140 0002 4285 3575

Sent To  
 Street, Apt. No.,  
 or PO Box No. Allison Gutierrez, S.D. Unified Port District  
 PO Box 120488  
 City, State, ZIP+4 SANDIEGO CA 92112-0488

PS Form 3800, August 2006 See Reverse for Instructions

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Allison Gutierrez  
 San Diego Unified Port District  
 PO Box 120488  
 SAN DIEGO CA 92112-0488

**COMPLETE THIS SECTION ON DELIVERY**

- A. Signature  Agent  Addressee
- B. Received by (Printed Name) \_\_\_\_\_ C. Date of Delivery \_\_\_\_\_
- D. Is delivery address different from item 1?  Yes  
 \*If YES, enter delivery address below:  No

3. Service Type
- Certified Mail  Express Mail
- Registered  Return Receipt for Merchandise
- Insured Mail  C.O.D.
4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number **7008 1140 0002 4285 3575**  
*(Transfer from service label)*

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540